IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.1545 of 1980
WITH
CIVIL APPLICATION NO.6709 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MAHENDRAKUAMR GORDHANDAS PATEL

Appearance:
MR KG SHETH, AGP for Appellant Nos.1-3
MR JJ YAJNIK for Respondent Nos.1-2

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 14/10/2002

ORAL JUDGEMENT

1. This appeal, by the State of Gujarat, is directed against the judgement and decree dated 21-07-1980 passed by the learned Judge, City Civil Court, Ahmedabad, Court No.14 in Civil Suit No.2566 of 1995.

2. In the said suit, filed by the respondent plaintiff, notice of eviction issued by the Dy. Collector, Ahmedabad under Section 202 of the Bombay Land Revenue Code, 1979 was challenged and a declaration was sought that it was illegal, invalid, ultra vires and without jurisdiction. After coming to the conclusion that Section 202 of the Code stood repealed in view of the provision of Section 19 of the Public Premises Act, the learned Judge held that the notice issued under Section 202 cannot be sustained in law. The learned Judge, therefore, decreed the suit and granted the declaration as prayed for. The State of Gujarat has, therefore, filed this appeal challenging the said decree.

3. It appears that on a previous occasion when the appeal was listed for hearing before another Court, a statement was made on behalf of the respondents that they were no longer in possession of the land in question. In response to that Civil Application No.6709 of 2002 was filed on behalf of the appellants seeking permission to produce latest extract of the Property Card. However, the question that arises in this appeal is whether the view taken by the learned trial Judge that Section 202 of the Land Revenue Code stood repealed is correct or not and it is not necessary in this appeal to go into any other question.

4. It appears that the learned trial Judge also decreed Civil Suit No.2749 of 1976 and other suits on the same ground. First Appeal No.960 of 1980, arising from the decree passed in Civil Suit No.2749 of 1976, came to be decided in State Vs. Surabhai Mafatbhai (23(2) G.L.R. 596) and B.K.Mehta, J held that the learned City Civil Judge was in error in holding that Section 202 of the Code stood repealed by the provisions contained in Section 19 of the Public Premises Act.

5. In view of the said decision, the view taken by the learned trial Judge that Section 202 stood repealed by Section 19 of the Public Premises Act cannot be upheld. The learned Judge has granted the decree on this short ground only. The appeal is, therefore, allowed and the judgement and decree of the trial Court is set aside. The matter shall, therefore, go back to the City Civil Court, Ahmedabad which will dispose of the matter on other issues, after giving opportunity to the parties to adduce evidence in support of their rival contentions, that might have been raised, or that may be required to be raised in light of the pleadings of the parties.

6. Civil Application No.6709 of 2002 does not survive and is disposed of. No order as to costs.

Sd/-

[M.C.PATEL, J]

'Bhavesh'